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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,361	07/17/2000	David N. Harris	0013-011	8110

40972 7590 09/14/2011  
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EXAMINER
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ALVAREZ, RAQUEL

ART UNIT	PAPER NUMBER
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3682

MAIL DATE	DELIVERY MODE
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09/14/2011

PAPER

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

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8 *Ex parte* DAVID N. HARRIS  
9

10  
11 Appeal 2010-004625  
12 Application 09/617,361  
13 Technology Center 3600  
14

15  
16 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and  
17 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.  
18 FETTING, *Administrative Patent Judge*.

19 DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE<sup>2</sup>

David N. Harris (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a non-final rejection of claims 60-118, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented a way of verifying an electronic purchase (Specification 1:6-8).

An understanding of the invention can be derived from a reading of exemplary claim 60, which is reproduced below [bracketed matter and some paragraphing added].

60. A computer system for verifying a commercial transaction between a user with credit card data and a merchant, said computer system comprising:

[1] a processing unit for processing data and code; and

[2] memory for storing said data and said code, said data and said code including

[3] a merchant communications module

operative to facilitate a connection with said merchant

for receiving a transaction approval request,

[4] an account-holder communications module

operative to facilitate a separate connection with an account-holder associated with said credit card data

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<sup>2</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed September 5, 2008) and Reply Brief ("Reply Br.," filed December 7, 2009), and the Examiner's Answer ("Ans.," mailed October 5, 2009).

1                   for said account-holder to verify said transaction  
2                   approval request, and  
3       [5] an authorization module  
4                   responsive to a verification indicator  
5                   switchable by said account holder between at least  
6                   a first state and a second state,  
7                   said first state enabling a previously  
8                   established verification requirement and  
9                   said second state disabling said previously  
10                  established verification requirement,  
11       said authorization module being operative to cooperate  
12       with said account-holder communication module  
13                  for obtaining account-holder verification of said  
14                  transaction approval request  
15                  in response to said verification indicator being in  
16                  said first state;  
17       said authorization module being further operative to  
18       automatically verify said transaction approval request  
19                  without obtaining verification from said account  
20                  holder  
21                  in response to said verification indicator being in  
22                  said second state,  
23       said authorization module being  
24                  responsive to receipt of said transaction approval  
25                  request and  
26                  operative to transmit an approval to said merchant  
27                  if said transaction approval request is  
28                  verified.

29       The Examiner relies upon the following prior art:

Blonder	US 5,708,422	Jan. 13, 1998
Joao	US 6,529,725 B1	Mar. 4, 2003

1 Claims 60-65, 72, 74-80, 87, 89-95, 102, and 104-118 stand rejected  
2 under 35 U.S.C. § 102(b) as anticipated by Blonder.

3 Claims 66 and 81 stand rejected under 35 U.S.C. § 103(a) as  
4 unpatentable over Blonder.

5 Claims 67-71, 73, 82-86, 88, 96-101, and 103 stand rejected under 35  
6 U.S.C. § 103(a) as unpatentable over Blonder and Joao.

### 7 ISSUES

8 The issues of anticipation and obviousness turn primarily on whether  
9 Blonder describes a switchable verification indicator, and the degree to  
10 which the claims are as narrowly recited as the Appellant argues.

### 11 FACTS PERTINENT TO THE ISSUES

12 The following enumerated Findings of Fact (FF) are believed to be  
13 supported by a preponderance of the evidence.

#### 14 *Facts Related to the Prior Art*

#### 15 *Blonder*

16 01. Blonder is directed to a way of authorizing a transaction in  
17 which the customer is informed of a pending authorization, and  
18 the transaction is then authorized only in response to a customer  
19 confirmation. Blonder allows a principal to be automatically  
20 alerted to, and/or to promptly authorize, an agent-initiated  
21 transaction which may, for example, be deemed atypical based on  
22 a pre-stored profile specified by the principal. Blonder 2:43-60.

1           02. Blonder describes its Figure 3, an illustrative table that  
2           associates alerting and approval threshold parameters to credit  
3           card numbers. Each record in the table of Figure 3 is a profile for a  
4           credit card number that is used to determine the manner in which  
5           transactions charged to that credit card number are processed. The  
6           alert flag field indicates that the card owner is to be notified, for  
7           example, when processing of the transaction would either cause  
8           certain conditions pre-defined for the use of the card to be  
9           breached, or a threshold parameter to be exceeded. The approval  
10          flag field alerts the card issuer that credit card transactions that  
11          violate pre-established conditions need to be authorized by the  
12          card owner as part of the card validation process. These pre-  
13          established conditions may be pre-selected by the card owner.  
14          The conditions field shows restrictions pre-selected by the card  
15          owners for use of their credit cards. When an approval flag is set  
16          to "no" then a permissible maximum transaction can take place  
17          without obtaining answer or verification from the account holder,  
18          disabling notification to the card holder. Setting the Approval flag  
19          to "yes" the system initiates communication with the cardholder to  
20          determine if amount above a certain threshold can be authorized.  
21          Blonder 5:48 – 6:10.

22         03. Blonder describes having Blonder's system contact the account-  
23         holder rather than the account-holder contacting Blonder's system  
24         during transaction authorization. Blonder 7:65 – 9:30.

25         04. When a merchant requests verification from a card issuer, the  
26         card issuer may call the customer possessing the card for

1 verification. When the customer provides the verification to the  
2 card issuer, effectively approving the transaction, the card issuer  
3 in turn provides verification to the merchant. Blonder 5:25-47.

4 *Joao*

5 05. Joao is directed to providing financial transaction authorization,  
6 notification and/or security, in conjunction with credit card,  
7 charge card, debit card, and/or currency or "smart" card use,  
8 savings and/or checking account activity and use and/or cellular  
9 telephone use. Joao 3:66 – 4:7.

10 06. In instances when the communication device does not have a  
11 reply or two-way pager feature, the cardholder may simply  
12 telephone the central processing office or a processing center for  
13 the card in order to personally appraise the center or office of his  
14 or her response to the central processing computer transmission  
15 regarding the transaction. Joao 19:1-7.

16 ANALYSIS

17 *Claims 60-65, 72, 74-80, 87, 89-95, 102, and 104-118 rejected under 35*  
18 *U.S.C. § 102(b) as anticipated by Blonder.*

19 We are unpersuaded by the Appellant's argument as to claims 60 and 75  
20 that Blonder fails to describe "a verification indicator switchable by said  
21 account holder between at least a first state and a second state, said first state  
22 enabling a . . . verification requirement, said second state disabling said . . .  
23 verification requirement." Appeal Br. 42.

1 The Examiner found such a verification indicator in Blonder Fig. 3.  
2 Answer 5. We agree that Blonder describes this. FF 02. The Appellant  
3 contends that Blonder's Fig. 3 fails to describe receiving its data from an  
4 account holder to enable or disable. Appeal Br. 44.

5 We find the description of Fig. 3 states that the account holder selects  
6 both the approval flags and conditions fields' contents. FF 02. Whether  
7 Blonder explicitly recites how this is done is irrelevant as the claims at issue  
8 to not recite either the timing or manner of such selection. It is sufficient  
9 that Blonder explicitly recites the capacity of the account holder to set those  
10 fields.

11 We are persuaded by the Appellant's argument as to claims 105 and 107;  
12 that Blonder fails to describe an interactive verification module operative to  
13 wait for said account-holder to initiate said connection with said account-  
14 holder communication module, any prior notification to said account-holder  
15 regarding said transaction being disabled. Appeal Br. 45 and 47.

16 The Examiner found such a verification indicator in Blonder 7:65 – 9:30.  
17 Answer 4. We agree that Blonder fails to describe this. FF 03. The  
18 Examiner found that Blonder's authorization module initiated the  
19 connection. Answer 4. As the Appellant contends, this is not what is  
20 claimed. Claim 108 depends from claim 107.

21 We are unpersuaded by the Appellant's argument as to claim 106 that  
22 Blonder fails to describe "a financier communication module operative to  
23 facilitate a connection with a financier for receiving a verification request  
24 related to said commercial transaction" and "an account-holder



1 communications module . . . operative to transmit an approval to said  
2 financier if said commercial transaction is verified.” Appeal Br. 46.

3 The Examiner found this in Blonder. Answer 5. We agree that Blonder  
4 describes this. FF 04. The Appellant contends that Blonder requires, in  
5 addition to the card owner, that a third-party approve the transaction and,  
6 towards that end, that a request for verification be sent to the third-party, and  
7 that there is no teaching of the financier submitting a verification request to a  
8 third-party verification system much less teaching the transmission of an  
9 approval from the third-party verification system to the financier if the  
10 commercial transaction is verified. Appeal Br. 46.

11 This argument is simply not commensurate with the scope of the claim.  
12 The claim makes no further limitation on the manner or content of the  
13 communication. To the extent the Appellant is arguing a distinction  
14 between Blonder’s database repository and a financier, Blonder’s credit card  
15 database clearly stands in place as a tool for the financier, and so  
16 communications with the database are in effect communications with the  
17 financier.

18 We are unpersuaded by the Appellant’s argument as to claims 109, 117,  
19 and 118. Appeal Br. 48-49. The Appellant repeats arguments from claims  
20 60, 75 and 106, and those arguments are equally unpersuasive here.

21 *Claims 66 and 81 rejected under 35 U.S.C. § 103(a) as unpatentable over*  
22 *Blonder.*

23 We are unpersuaded by the Appellant’s argument that Blonder fails to  
24 describe an authentication code from the account-holder "prior to said step  
25 of reciting at least a portion of said transaction approval request to said

1 account holder." Appeal Br. 50; Reply Br. 20-21. The Examiner took  
2 notice of the notoriety of such authentication codes as PIN's (Personal  
3 Identification Numbers) used to authenticate users prior to transactions. We  
4 agree that the use of authentication techniques were highly prevalent to  
5 prevent fraud and in particular the use of codes for such authentication was  
6 widely used by those of ordinary skill. The Appellant has not challenged  
7 this notoriety, but only its presence in Blonder. This rejection is under  
8 obviousness rather than anticipation.

9 *Claims 67-71, 73, 82-86, 88, 96-101, and 103 rejected under 35 U.S.C.*  
10 *§ 103(a) as unpatentable over Blonder and Joao.*

11 We are unpersuaded by the Appellant's argument that Joao fails to  
12 describe waiting for the account-holder to initiate communication. Reply  
13 Br. 21-22. The Examiner found that Joao described having an account  
14 holder initiate the communication in certain instances where it was  
15 foreseeable that the account holder would need to without waiting to be  
16 contacted first. Answer 6.

17 We agree that Joao describes such an alternative where the account-  
18 holder initiates the communication. FF 06. The Appellant contends the  
19 account holder is contacted first in these instances, but we find no evidence  
20 to support this in Joao. Instead, the account holder calls on his own to  
21 appraise the card provider.

## 22 CONCLUSIONS OF LAW

23 The rejection of claims 60-65, 72, 74-80, 87, 89-95, 102, 106, and 109-  
24 118 under 35 U.S.C. § 102(b) as anticipated by Blonder is proper.

1 The rejection of claims 105, 107, and 108 under 35 U.S.C. § 102(b) as  
2 anticipated by Blonder is improper.

3 The rejection of claims 66 and 81 under 35 U.S.C. § 103(a) as  
4 unpatentable over Blonder is proper.

5 The rejection of claims 67-71, 73, 82-86, 88, 96-101, and 103 under 35  
6 U.S.C. § 103(a) as unpatentable over Blonder and Joao is proper.

7 DECISION

8 To summarize, our decision is as follows.

- 9 • The rejection of claims 60-65, 72, 74-80, 87, 89-95, 102, 106, and  
10 109-118 under 35 U.S.C. § 102(b) as anticipated by Blonder is  
11 sustained.
- 12 • The rejection of claims 105, 107, and 108 under 35 U.S.C. § 102(b) as  
13 anticipated by Blonder is not sustained.
- 14 • The rejection of claims 66 and 81 under 35 U.S.C. § 103(a) as  
15 unpatentable over Blonder is sustained.
- 16 • The rejection of claims 67-71, 73, 82-86, 88, 96-101, and 103 under  
17 35 U.S.C. § 103(a) as unpatentable over Blonder and Joao is  
18 sustained.

19 No time period for taking any subsequent action in connection with this  
20 appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.  
21 § 1.136(a)(1)(iv) (2007).

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AFFIRMED-IN-PART

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